

Conditions of Order

1. Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract:

Business Day means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in the location of the Site or Brisbane, Australia.

Conditions of Order means this document.

Confidential Information means all information (including commercially sensitive information and technical know-how and personal information (as that term is defined in the *Privacy Act 1988*(Cth))) directly or indirectly disclosed or made available by or on behalf of Stanwell to the Supplier or about Stanwell and developed or derived by the Supplier in connection with the Contract, but does not include information which:

- (a) is rightfully known or in the possession or control of the Supplier and is not subject to an obligation of confidence on the Supplier;
- (b) is or becomes public knowledge other than as a result of a breach of the Contract; or
- (c) the Supplier can demonstrate has been independently developed by the Supplier other than in connection with the Contract or acquired from a source which was not subject to a duty of confidentiality to Stanwell.

Contract means the Purchase Order, these Conditions of Order and any other document stated in the Purchase Order to be part of the Contract.

Data Security Breach means any actual or potential unauthorised access, modification, use, disclosure, destruction or loss of Confidential Information (including loss of access or integrity), and includes an eligible data breach (as that term is defined in the *Privacy Act 1988*(Cth)) in relation to any personal information (as that term is defined in the *Privacy Act 1988*(Cth)).

Defect means any defects, deficiencies, omissions, faults or non-compliances in the whole or any part of the Goods or Services, including that the Goods or Services do not comply with the requirements of the Contract.

Defects Liability Period means the period of 12 months on and from the completion of the Supply in accordance with the Contract, or such other period as is agreed in the Purchase Order.

Delivery Date means the date/s specified in the Purchase Order by which the Goods and/or Services are to be supplied to Stanwell.

Goods means the goods, materials or items to be supplied by the Supplier as specified in the Purchase Order (if any).

Losses means losses, damages, costs, charges, expenses (including legal costs on a party/party basis unless awarded otherwise), penalties, interest and fines, including those arising as a result of claims and claims, demands, actions, proceedings or suits by any person.

Price means the prices, fees and rates or other amounts set out or referred to in the Purchase Order.

Purchase Order means the order for Goods and/or Services issued by Stanwell to the Supplier.

Security Measures means all reasonably physical security, logical access security, network security, communications security and personnel security measures that are reasonable for a prudent, skilled and diligent contractor to perform in accordance with good industry practice.

Services means the services to be performed by the Supplier as specified in the Purchase Order (if any).

Site means the areas specified in the Purchase Order for the performance of the Supply (including delivery of the Goods).

Stanwell means the Stanwell entity specified in the Purchase Order.

Stanwell's Policies means:

- (a) any of Stanwell's policies and procedures available from the 'Doing Business With Us' and 'Information Publication Scheme' page on Stanwell's website (www.stanwell.com) or Stanwell on request; and
- (b) any other Stanwell's policies and procedures applicable to the Site and provided to the Supplier.

Supply means all obligations, duties and responsibilities of the Supplier under the Contract and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services and/or supply the Goods (as applicable) in accordance with the Contract.

Supplier means the party named as the 'Supplier' in the Purchase Order.

Supplier's Personnel means the Supplier's employees, agents, subcontractors and suppliers.

2. Term

The Contract commences on the earlier of acceptance of the Contract in writing (which if not accepted or rejected, is deemed to occur 5 Business Days after issue of the Purchase Order) and the Supplier commencing the Supply, and continues until the end of the Defects Liability Period, unless terminated earlier.

3. Agreement to Supply

- (a) The Supplier must carry out the Supply by the Delivery Date/s and any other agreed timeframes, promptly notify Stanwell of any actual or anticipated delay in performing the Supply and use its best endeavours to mitigate any such delay.
- (b) Unless otherwise specified in the Purchase Order:
 - (i) the Supplier must supply all equipment, consumables and materials and importation licences/approvals necessary for the performance of the Supply in accordance with the Contract; and
 - (ii) the Price is fixed and inclusive of all taxes (excluding GST), stamp duty, delivery, handling, courier and postage fees and the matters identified in clause 3(b)(i).

4. Subcontracting and assignment

- (a) The Supplier must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it, except with the prior written consent of Stanwell, which will not be unreasonably withheld.
- (b) Stanwell may, on reasonable notice to the Supplier, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it to another Queensland Government owned entity, without the approval of the Supplier, or to any other entity with the approval of the Supplier, which will not be unreasonably withheld.

5. Laws, regulations and policies

The Supplier must:

- (a) comply with all laws, government requirements, codes and standards affecting or applicable to the Supply (including relating to anti-corruption and anti-slavery, workplace health and safety

and the environment, heavy vehicles, labour hire and privacy);

- (b) comply with Stanwell's Policies and Stanwell's reasonable directions in relation to Security Measures as relevant to the Supply;
- (c) pay any fees, charges, levies and taxes (including long service leave levies) imposed by a government entity in relation to the Supply;
- (d) implement adequate work health and safety and environmental policies and procedures in respect of the Supply (as relevant) and, at the request of Stanwell, provide evidence in writing of:
 - (i) those policies and procedures; and
 - (ii) the Supplier's compliance with those policies and procedures; and
- (e) ensure that persons employed or engaged in the performance of the Supply are provided with safe systems of work, adequate welfare facilities and such instruction, training and supervision as is necessary to enable the Supply to be performed without risk to health and safety of any person or the environment.

6. Quality

The Supplier warrants that:

- (a) it will at all times be suitably qualified and experienced to perform the Supply;
- (b) the Supply will be performed in accordance with the Contract and:
 - (i) best practice standards of diligence, skill, care and efficiency to be expected of a competent Supplier performing a supply of a similar nature to the Supply; and
 - (ii) any specifications and warranties related to the Supply (whether provided by Stanwell as part of the Purchase Order or the manufacturer of the Goods); and
- (c) where the Supply is or includes the supply of Goods, the Goods will be of acceptable quality, fit for their intended purpose and free from all Defects.

7. Acceptance or rejection of Supply

- (a) Within 5 Business Days of delivery of the Goods to the Site or notification from the Supplier that the Services are completed, Stanwell may notify the Supplier whether the

Supply is accepted or rejected, and if Stanwell fails to do so, the Supply will be deemed accepted.

- (b) Stanwell may only reject the Supply if it fails to conform with the Contract. If the Supply is rejected, Stanwell's notice of rejection must state the reasons why the Supply did not conform with the Contract and may:
 - (i) in the case of a material or fundamental failure of the Supply, require the Supplier to remove the Goods and refund to Stanwell any amount paid in relation to those Goods;
 - (ii) direct the Supplier to replace or rectify the Supply so that it conforms with the Contract; or
 - (iii) elect to accept the Supply and claim damages for the Supplier's failure to comply with the Contract.
- (c) Stanwell will act reasonably in exercising its rights under clauses 7(a) and 7(b).
- (d) If the Supplier is directed to replace or rectify the Supply, the Supplier must do so within a reasonable period and notify Stanwell when the replacement or rectification is completed and clause 7(a) will re-apply.
- (e) The Supplier must provide Stanwell reasonable access to the places where the Supply is being performed for the purpose of inspecting the Goods and/or work in progress, and subject to Stanwell providing reasonable notice and complying with applicable site policies.
- (f) Nothing in this clause 7 or Stanwell's payment for the Supply affects Stanwell's subsequent rights in respect of a Supply that does not comply with the Contract.

8. Defects liability period

- (a) During the Defects Liability Period the Supplier must, at its expense, rectify any Defect within a reasonable time of notification by Stanwell of the Defect.
- (b) If the Supplier fails to remedy the Defect in accordance with clause 8(a) to the reasonable satisfaction of Stanwell, Stanwell may, without prejudice to its other rights, rectify that Defect and the reasonable costs incurred in doing so will be a debt due from the Supplier to Stanwell.

9. Payment

- (a) The Supplier must render a tax invoice (in the form provided by Stanwell) to Stanwell in respect of the Goods delivered and/or Services performed, calculated by reference to the Price.
- (b) Subject to the Contract, Stanwell will pay a correctly rendered tax invoice within 30 days from the date the tax invoice is received.
- (c) If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 9(c) (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (d) Stanwell may deduct from any amount otherwise due to the Supplier any amounts due from the Supplier to Stanwell and Stanwell's reasonable estimate of losses incurred, or that will be incurred, by Stanwell in respect of any good faith claims that Stanwell has against the Supplier relating to the Supply.
- (e) Stanwell must notify the Supplier in writing of any amounts deducted under clause 9(d) and the basis for the deduction.
- (f) Without limiting clause 7(f), neither payment of moneys nor an acceptance of those moneys will be evidence that the Goods have been delivered or the Services have been performed satisfactorily. Payment will be payment on account only.

10. Risk in the Supply

- (a) Title to any part of the Goods or other deliverables the subject of the Supply passes to Stanwell upon the earlier of:
 - (i) payment for the Supply;
 - (ii) provision of the Services to Stanwell; or
 - (iii) delivery of the Goods to the Site or the incorporation of the materials into the physical manifestation of the Services (as applicable).
- (b) The Supplier warrants that title in the Goods, when it passes to Stanwell under clause 10(a), will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.
- (c) The Supplier must protect and bears the risk of loss or damage to:

- (i) the Goods until they are delivered to the Site and safely unloaded at the Site; and
- (ii) the physical manifestation of the Services (if any) until the completion of the Services.

11. Insurance

- (a) The Supplier must maintain (to the extent applicable to the Supply):
 - (i) public liability insurance (providing cover in respect of each and every occurrence to an amount of not less than \$20 million);
 - (ii) professional indemnity insurance (but only where the Supplier is performing professional services), providing cover in respect of each and every claim to an amount of not less than \$2 million);
 - (iii) workers compensation insurance in accordance with relevant laws;
 - (iv) motor vehicle insurance in accordance with relevant laws;
 - (v) transit insurance to cover the replacement of Goods in transit; and
 - (vi) any other insurance agreed in the Purchase Order.
- (b) The insurance policies required by clause 11(a) must be maintained with insurers having a rating of A- or better from Standard and Poors, Moodys, Fitch's or equivalent ratings agencies, on terms and conditions that are reasonably commercially available.
- (c) The Supplier must, if requested, provide evidence to the reasonable satisfaction of Stanwell (including copies of its certificates of currency) of the Supplier's compliance with this clause 11.

12. Indemnity

- (a) The Supplier indemnifies Stanwell against Losses arising in connection with:
 - (i) any damage to the Site, assets or equipment within the Site or any other property whether located on the Site or otherwise;
 - (ii) death or injury to any person whether located on the Site or otherwise;

- (iii) a breach by the Supplier or Supplier's Personnel of any law;
- (iv) any actual or alleged infringement of any intellectual property rights; and
- (v) any third party losses not otherwise covered by clauses 12(a)(i) to 12(a)(iv),

to the extent the Losses are caused by any act, error or omission of the Supplier or Supplier's Personnel.

- (b) The Supplier's liability to indemnify Stanwell under clause 12(a):
 - (i) will be reduced proportionally to the extent that the Losses are caused by Stanwell or Stanwell's personnel; and
 - (ii) will not apply to any monetary penalty arising under workplace health and safety laws where indemnity or other similar arrangement for such a penalty is expressly prohibited.

13. Intellectual property rights

- (a) The Supplier warrants that the intellectual property rights of a third party will not be infringed by the performance of the Supply under the Contract or the use of the Supply by Stanwell.
- (b) Stanwell will own any intellectual property rights in any data, information or materials created, developed or produced in connection with provision of the Supply by the Supplier.

14. Confidentiality, privacy and data security

- (a) In this clause 14, **Authorised Persons** means the Supplier's officers and employees, its related bodies corporate (as that term is defined in the *Corporations Act 2001*(Cth), joint venturers, contractors, advisers, financiers, auditors and insurers (and their respective employees and officers) who:
 - (i) have a need to know the Confidential Information (and only to the extent that they have a need to know); and
 - (ii) are under an express or professional obligation to keep the Confidential Information confidential.

- (b) The Supplier must keep confidential, only use for the purposes related to the Contract (and for which it has been collected), and not disclose except as permitted under clause 14(d), the Confidential Information. The Supplier must also have in place adequate Security Measures to protect Confidential Information against Data Security Breaches.
 - (c) The Supplier must:
 - (i) comply with Stanwell's reasonable requests concerning Confidential Information including Security Measures; and
 - (ii) on Stanwell's request, provide evidence of its compliance with this clause 14.
 - (d) Subject to clause 14(c), the Supplier may disclose the Confidential Information:
 - (i) to its Authorised Persons, provided that each Authorised Person complies with the confidentiality obligations of this Contract as if that person was a party to this Contract;
 - (ii) to the extent required by law or any applicable stock exchange listing rule, or to any taxation authority;
 - (iii) to bona fide prospective purchasers or financiers of, or investors in, the Supplier's business provided that, before disclosure the purchasers, financiers or investors have agreed in writing with the Supplier to comply with substantially the same obligations in respect of the Confidential Information as those imposed on the Supplier under this Contract; or
 - (iv) with Stanwell's prior written consent.
 - (e) When dealing with personal information (as that term is defined in the *Privacy Act 1988* (Cth)) in performing the Supply, the Supplier must comply with the requirements of the *Privacy Act 1988* (Cth) and not do anything which would be a breach of an Australian Privacy Principle.
 - (f) If the Supplier becomes aware that there are reasonable grounds to suspect that there has or may have been a Data Security Breach or material attempt to circumvent Security Measures in relation to any Confidential Information held by the Supplier as a result of this Contract or its provision of the Supply, the Supplier must:
 - (i) notify Stanwell in writing as soon as possible; and
 - (ii) unless otherwise directed by Stanwell, carry out an assessment under the direction of Stanwell (and, to the extent relevant, in accordance with the requirements of the *Privacy Act 1988* (Cth)), or take any other action as reasonably directed by Stanwell.
 - (g) Except to the extent required to be retained by law, upon termination of the Contract or when otherwise notified to do so by Stanwell, the Supplier must promptly return or destroy (at Stanwell's election) any Confidential Information.
- 15. Default and termination**
- (a) Stanwell may terminate this Contract (in whole or in part) immediately by written notice to the Supplier:
 - (i) if the Supplier becomes insolvent or bankrupt; or
 - (ii) if, following notification from Stanwell that the Supplier has failed to perform or comply with any of its obligations under the Contract (**Supplier Default**), the Supplier fails to remedy the Supplier Default within a reasonable time and to the reasonable satisfaction of Stanwell.
 - (b) Stanwell may, for any reason in Stanwell's absolute discretion, reduce the scope of all or any portion of the Supply or terminate this Contract (in whole or in part) immediately by written notice to the Supplier. Stanwell may engage another Supplier to perform the Supply (or any part of the Supply) terminated under this clause 15(b).
 - (c) On receiving a notice under clause 15(a) or 15(b), the Supplier must:
 - (i) immediately cease performance of the Supply to the extent specified in the written notice;
 - (ii) immediately take all possible action to mitigate any Losses incurred by it or Stanwell as a result of such termination; and
 - (iii) take any action relating to the termination of the Contract reasonably required by Stanwell.
 - (d) Without limiting any other rights or remedies Stanwell may have, if Stanwell terminates under clause 15(a), the Supplier must pay or

reimburse Stanwell's reasonable costs of obtaining replacement Goods and/or Services.

- (e) Upon termination under clause 15(a), Stanwell will pay to the Supplier the Price for the provision of the Supply up to the date of termination, less any amounts payable under clause 15(d) and any amounts Stanwell is entitled to set off under clause 9(d).
- (f) Upon termination under clause 15(b), Stanwell will pay to the Supplier the Price for the provision of the Supply up to the date of termination plus the Supplier's reasonable and substantiated Losses (if any) incurred as a direct result of termination, less any amounts Stanwell is entitled to set off under clause 9(d).

16. Anti-corruption

- (a) A director, employee or agent of the Supplier must not:
 - (i) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
 - (ii) enter into any business agreement with,

any director, employee or agent of Stanwell other than as a representative of Stanwell or in the ordinary and proper course of business between any of those parties.
- (b) The Supplier must not undertake any activity, or allow any activity to be undertaken in connection with the Supply, that may constitute a breach of any anti-corruption laws or cause Stanwell to be in breach of any anti-corruption laws.
- (c) The Supplier represents that at the date of this Contract, no conflict of interest exists or is likely to arise in the performance of the Supplier's obligations under the Contract, including that there is no relationship between it and Stanwell, between any of the Supplier's directors or employees and Stanwell or between the Supplier and a director or employee of Stanwell that gives rise to an actual or potential conflict of interest.
- (d) The Supplier must immediately notify Stanwell upon becoming aware of any actual or potential conflict of interest. The Supplier must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under the Contract.

17. Anti-slavery

The Supplier must provide Stanwell with any information it reasonably requires (and provide all reasonable assistance) to enable Stanwell to comply with its obligations under all applicable anti-slavery laws and government requirements affecting or applicable to the Supply.

18. Queensland Government Requirements

- (a) The Supplier must, in carrying out the Supply, comply with:
 - (i) the Ethical Supplier Threshold (as set out in clause 19 of the [Queensland Procurement Policy](#));
 - (ii) the [Ethical Supplier Mandate](#); and
 - (iii) the [Queensland Government Supplier Code of Conduct](#).
- (b) Any failure by the Supplier to comply with the Ethical Supplier Threshold in breach of clause 18(a)(i) constitutes a material breach of this Contract.
- (c) The Supplier acknowledges that if the Contractor fails to comply with the Queensland Government policies referred to in clause 18(a), Stanwell may refer matters of non-compliance to the QGP Compliance Branch who may publish information about any sanctions imposed on the Supplier.
- (d) The Supplier warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the [Building and Construction Code of Practice \(Code\)](#) that would preclude it from tendering for work to which the Code applies.
- (e) To the extent it applies to the Contract, the Supplier must:
 - (i) comply with, and meet any obligations imposed by, the Code;
 - (ii) maintain adequate records of compliance with the Code by it, its subcontractors and related entities, and provide access to these records and any other information and documents reasonably required by Stanwell as is necessary to monitor and investigate compliance with the Code; and
 - (iii) notify Stanwell as soon as reasonably practicable where a change in the Contract or the Supply proposed would (or would be likely to) affect compliance with the Code.

19. Miscellaneous provisions

- (a) A notice under the Contract must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:
 - (i) if posted, on the 6th Business Day after posting for regular post (or the 10th day if posted to or from a place outside Australia), the 4th Business Day after posting for priority post, and the next Business Day after posting for express post;
 - (ii) if delivered personally, upon delivery; or
 - (iii) if sent by email on a Business Day, on dispatch of the transmission or on a day other than a Business Day, on the next Business Day, unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.
- (b) All notices sent by email must be sent to the party's nominated contact person under the Contract, or to another person if the other party directs.
- (c) If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Conditions of Order, the Purchase Order will prevail. The Purchase Order and these Conditions of Order will have precedence over any other documents forming part of the Contract.
- (d) All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract (including indemnities, confidentiality obligations and Stanwell's rights under the Contract in respect of any Defect in the Supply) will survive the rescission, termination or expiration of the Contract.
- (e) The Contract contains the entire agreement between the parties and supersedes all prior arrangements between the parties relating to the Goods or Services (any Supplier terms and conditions contained in delivery notes, invoices, quotes or elsewhere are expressly excluded).
- (f) The Contract is governed by and must be construed and enforced in accordance with the laws of Queensland and the parties unconditionally submit to the exclusive jurisdiction of Queensland (and courts of appeal from them).

20. Interpretation

In the Contract unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and a gender includes all other genders;
- (b) the words 'include' and 'including' are to be construed without limitation;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to:
 - (i) a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
 - (ii) a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (iii) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
 - (iv) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
 - (v) a party includes its executors, administrators, successors and permitted assigns; and
 - (vi) where a party is more than one person the Contract binds all of them separately and each of them together.